

Regular Session, 2009

HOUSE BILL NO. 559

BY REPRESENTATIVES JANE SMITH, CORTEZ, ELLINGTON, FANNIN,
HARRISON, HAZEL, LEBAS, LEGER, LIGI, MCVEA, MORRIS, PEARSON,
SCHRODER, SMILEY, GARY SMITH, PATRICIA SMITH, STIAES, WHITE,
AND WILLIAMS AND SENATOR GUILLORY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To enact Chapter 23 of Title 39 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 39:2171 through 2179, relative to veterans affairs; to create the Louisiana
4 Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small
5 Entrepreneurships; to provide for state goals for procurements and public contracts
6 for veteran and service-connected disabled veteran-owned small entrepreneurships;
7 to provide for certification; to provide for responsibilities and training of the
8 commissioner of administration; to provide for initiative coordinators and reporting;
9 to provide for responsibilities of the Louisiana Department of Veterans Affairs; to
10 provide for definitions; to provide for application; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Chapter 23 of Title 39 of the Louisiana Revised Statutes of 1950,
13 comprised of R.S. 39:2171 through 2179, is hereby enacted to read as follows:

14 CHAPTER 23. LOUISIANA INITIATIVE FOR VETERAN AND SERVICE-

15 CONNECTED DISABLED VETERAN-OWNED SMALL ENTREPRENEURSHIPS

16 (THE VETERAN INITIATIVE)

17 §2171. Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-
18 Owened Small Entrepreneurships; intent

19 A. The legislature hereby establishes the Louisiana Initiative for Veteran and
20 Service-Connected Disabled Veteran-Owned Small Entrepreneurships (the Veteran
21 Initiative), hereinafter referred to in this Chapter as the "initiative", to facilitate the

1 growth and stability of Louisiana's economy by fostering utilization by state interests
2 of the business offerings available for state procurement and public contracts from
3 Louisiana's veteran and service-connected disabled veteran-owned small
4 entrepreneurships, and providing a clearinghouse of information to these
5 entrepreneurships. Veterans of the United States Armed Forces have served the state
6 of Louisiana and the United States, often at great risk, to preserve the American
7 dream of freedom and prosperity. Given the magnitude of the state's procurement
8 and public contracting activity, state government is uniquely situated to create an
9 environment where veteran and service-connected disabled veteran-owned small
10 entrepreneurships have an opportunity to thrive and ultimately enhance the stability
11 of Louisiana's economy.

12 B. The provisions of this Chapter are intended to encourage business
13 opportunities for veteran and service-connected disabled veteran-owned small
14 entrepreneurships. The criteria for certification as a veteran and service-connected
15 disabled veteran-owned small entrepreneurship for the purposes of the initiative shall
16 be as established in R.S. 39:2006, and as may be additionally refined by
17 administrative rule.

18 §2172. Definitions

19 As used in this Chapter, the following words and phrases shall have the
20 meanings ascribed to them in this Section, unless the context clearly indicates
21 otherwise:

22 (1) "Agency" or "state agency" means any department, office, division,
23 commission, council, board, bureau, committee, institution, agency, government
24 corporation, or other establishment or official of the executive or judicial branches
25 of state government.

26 (2) "Commissioner" means the commissioner of administration.

27 (3) "Contract" or "public contract" means all types of state agreements,
28 regardless of what they may be called, for the purchase of materials, supplies,
29 services, or major repairs, or for the making of any public works. It includes awards
30 and notices of award; contracts of a fixed-price, cost, cost-plus a fixed-fee, or

1 incentive type; contracts providing for the issuance of job or task orders; leases;
2 letter contracts; and purchase orders. It also includes supplemental agreements with
3 respect to any of the foregoing.

4 (4) "Contractor" means any person having a contract with a state agency.

5 (5) "Data" means recorded information, regardless of form or characteristic.

6 (6) "Goal" means a numerically expressed objective relating to state
7 procurements and public works contracts that a state agency or contractor is
8 encouraged to make a good faith effort to achieve.

9 (7) "Procurement" means the buying, purchasing, renting, leasing, or
10 otherwise obtaining any materials, supplies, services, or major repairs. It also
11 includes all functions that pertain to the obtaining of any public procurement,
12 including description of requirements, selection and solicitation of sources,
13 preparation and award of contract, and all phases of contract administration.

14 (8) "Public work" means the erection, construction, alteration, improvement,
15 or repair of any public facility or immovable property owned, used, or leased by a
16 state agency.

17 (9) "Service-connected disabled veteran-owned small entrepreneurship"
18 means any corporation, partnership, individual, sole proprietorship, joint stock
19 company, joint venture, or any other legal entity which has not less than fifty-one
20 percent ownership by a veteran of the United States Armed Forces with a service-
21 connected disability, and meets the criteria for certification by the secretary of the
22 Department of Economic Development pursuant to R.S. 39:2176. Service-connected
23 disability will be ascertained with appropriate documents from the United States
24 Department of Veterans Affairs or the Louisiana Department of Veterans Affairs.

25 (10) "Veteran-owned small entrepreneurship" means any corporation,
26 partnership, individual, sole proprietorship, joint stock company, joint venture, or
27 any other legal entity which has not less than fifty-one percent ownership by a
28 veteran of the United States Armed Forces and meets the criteria for certification by
29 the secretary of the Department of Economic Development pursuant to R.S. 39:2176.

1 §2173. Application of Chapter

2 Notwithstanding any other provision of law to the contrary, the provisions of
3 this Chapter apply to procurements and public contracts which are governed by
4 Chapter 10 of Title 38, Chapters 16 and 17 of this Title, and Parts XIII and XIII-A
5 of Chapter 1 of Title 48 of the Louisiana Revised Statutes of 1950. This Chapter
6 shall not apply to agency expenditures for amortization of debt, debt service,
7 depreciation, employee benefits, per diem, relocation expenses, salaries, postage, and
8 transfers of charges. This Chapter shall not apply to contracts for sole-source items,
9 contracts with other governmental entities, and those contracts that are prohibited by
10 federal law from inclusion in this Chapter.

11 §2174. State goals for procurements and public contracts

12 The commissioner of administration shall establish annual goals for veteran
13 and service-connected disabled veteran-owned small entrepreneurship participation
14 in state procurements and public contracts. The commissioner shall determine the
15 appropriate level and number of goals for each year. The formulation of each goal
16 shall be based on historical procurement and public contracting data and any other
17 factors which the commissioner deems useful. As part of development of goals, the
18 commissioner may consider the capacity of veteran and service-connected disabled
19 veteran-owned small entrepreneurship available to participate in meeting goals,
20 which may be determined based on past experience, available veteran and service-
21 connected disabled veteran-owned small entrepreneurship certifications, and
22 recognized industry composition. The commissioner shall provide guidance to
23 agencies with respect to estimation of dollar values for anticipated procurement and
24 contract activity to be used in the development of a goal. Agencies shall report any
25 data required by the commissioner in this regard in accordance with a schedule
26 established by the commissioner.

27 §2175. Competitive source selection

28 Methods of source selection which may be utilized by an agency to satisfy
29 a state goal for contracting with veteran and service-connected disabled veteran-
30 owned small entrepreneurship shall include but not be limited to:

1 (1) Any method provided for in an executive order governing small
2 purchases.

3 (2) The purchase of goods, operating services, major repairs, personnel
4 services, professional services, consulting services, and public works directly from
5 a certified veteran and service-connected disabled veteran-owned small
6 entrepreneurship under an agency's discretionary purchasing authority.

7 (3) Direct purchase from a certified veteran and service-connected disabled
8 veteran-owned small entrepreneurship who is a distributor on a state contract.

9 (4) The inclusion of the requirement that a bidder or offeror have a good
10 faith subcontracting plan to utilize a certified veteran and service-connected disabled
11 veteran-owned small entrepreneurship as part of a competitive bid or a request for
12 proposal, pursuant to guidelines established by the commissioner of administration.

13 (5) An allowance for at least ten percent of the total evaluation points in a
14 request for proposal be awarded to an offeror demonstrating a good faith effort to use
15 veteran and service-connected disabled veteran-owned small entrepreneurs as
16 subcontractors.

17 (6) An allowance for ten percent of the total evaluation points in a request
18 for proposal be awarded to an offeror who is a certified veteran and service-
19 connected disabled veteran-owned small business entrepreneurship.

20 §2176. Certification of businesses by Department of Economic Development;
21 listing of veteran and service-connected disabled veteran-owned small
22 entrepreneurships; reporting

23 A. The secretary of the Department of Economic Development, hereinafter
24 referred to in this Section as the "department", shall certify businesses as veteran and
25 service-connected disabled veteran-owned small entrepreneurs for the purposes
26 of this Chapter. "Veteran-owned small entrepreneurship" and "service-connected
27 disabled veteran-owned small entrepreneurship" means any corporation, partnership,
28 individual, sole proprietorship, joint stock company, joint venture, or any other legal
29 entity which meets all of the following criteria:

30 (1) Independently owned and operated.

1 (2) Not dominant in its field of operations, which shall be determined by
2 consideration of the business's number of employees, volume of business, financial
3 resources, competitive status, and ownership or control of materials, processes,
4 patents, license agreements, facilities, and sales territory.

5 (3) Is owned by and has officers who are citizens or legal residents of the
6 United States, all of whom are domiciled in Louisiana, and who maintain the
7 principal business office in Louisiana.

8 (4) Together with any of its affiliate entities, has fewer than fifty full-time
9 employees with average annual gross receipts not exceeding five million dollars per
10 year for construction operations and three million dollars per year for
11 nonconstruction operations, for each of the previous three tax years.

12 B. The department shall develop an application process for entities seeking
13 certification, which process shall be established through promulgation of rules and
14 regulations pursuant to the Administrative Procedure Act. The department shall
15 notify each applicant in writing relative to the outcome of their application. The
16 department shall maintain a listing of all veteran and service-connected disabled
17 veteran-owned small entrepreneurship which shall be updated monthly. This listing
18 shall be available on the Internet and shall also be available in written form upon
19 written request.

20 C. The certification of veteran and service-connected disabled veteran-
21 owned small entrepreneurship as provided herein shall supersede all other rules and
22 regulations promulgated by any agency specifically related to certification or
23 designation of a business which is small or in some other way noteworthy for
24 purposes of procurement and public contracts; however, this preeminence shall not
25 apply to any programs or activities required by the federal government.

26 D. The department shall consult with the Louisiana Department of Veterans
27 Affairs and any other state agency as is necessary to carry out the provisions of this
28 Chapter. The department shall rely on data to be furnished by the Louisiana
29 Workforce Commission with respect to certification criteria related to numbers of
30 employees.

1 E. The department shall report annually to the commissioner of
2 administration with respect to the graduation rates for businesses which grew to
3 exceed the eligibility requirements for certification in the most recently concluded
4 fiscal year. Such report shall be made in accordance with the requirements of the
5 commissioner of administration. The department shall also provide the
6 commissioner of administration any other data he may require with respect to the
7 certification of businesses and the initiative.

8 §2177. Responsibilities of the commissioner of administration; training; reporting

9 A. The commissioner shall establish policies and procedures necessary for
10 implementing the Louisiana Initiative for Veteran and Service-Connected Disabled
11 Veteran-Owned Small Entrepreneurships and increasing the use of veteran and
12 service-connected disabled veteran-owned small entrepreneurships in state
13 procurements and public contracts. This shall include measures to ensure agency
14 adoption and compliance with the requirements of this Chapter.

15 B. The commissioner shall develop standard contract clauses to be used by
16 agencies in requests for proposals, advertisements, and solicitations for bids as are
17 necessary to carry out the purposes of this Chapter.

18 C. The commissioner shall provide periodic training for relevant state
19 employees to acquaint them with the requirements of the initiative and administrative
20 law related thereto. Each agency shall ensure that at least one employee from that
21 agency attends such training, in accordance with the training schedule to be
22 established by the commissioner. The commissioner shall include information with
23 respect to actual agency staff participation in such training as part of his annual
24 report to the legislature as provided in Subsection E of this Section.

25 D. The commissioner shall conduct a training program at least semiannually
26 to acquaint veteran and service-connected disabled veteran-owned small
27 entrepreneurships with state procurement and public contract proposal and bidding
28 practices. This shall include all state procurements which are governed by Chapter
29 10 of Title 38, Chapters 16 and 17 of this Title, and Parts XIII and XIII-A of Chapter
30 1 of Title 48 of the Louisiana Revised Statutes of 1950. The commissioner shall also

1 secure the assistance of staff from the Louisiana Department of Veterans Affairs for
2 veteran-specific information and data, and either the Department of Transportation
3 and Development, Department of Natural Resources, or Department of
4 Environmental Quality who are knowledgeable about state procurements undertaken
5 pursuant to Chapter 10 of Title 38 and Parts XIII and XIII-A of Chapter 1 of Title
6 48 of the Louisiana Revised Statutes of 1950, for the purpose of providing practical
7 advice to veteran and service-connected disabled veteran-owned small
8 entrepreneurships relative to procurements and public contracts governed by such
9 law.

10 E. The commissioner shall annually prepare a report on the progress of the
11 initiative in the most recently ended fiscal year, which shall be made available on the
12 Internet and shall be delivered to the House Committee on Appropriations and the
13 Senate Committee on Finance by the fifteenth day of January each year. The
14 commissioner shall establish the reporting requirements for agencies which
15 undertake procurements and public contracts independent of the division of
16 administration, so that data from such agencies will be available to the commissioner
17 for inclusion in this report. The commissioner's report shall include information
18 which he deems useful to the legislature and the citizens of Louisiana with respect
19 to analysis of the progress of the initiative, but at a minimum, it shall contain the
20 following elements:

21 (1) The total number and dollar value of all agency contracts awarded to
22 veteran and service-connected disabled veteran-owned small entrepreneurships in
23 that fiscal year.

24 (2) The number of contracts that included a good faith veteran and service-
25 connected disabled veteran-owned small entrepreneurship subcontracting plan.

26 (3) Information related to the graduation rates for veteran and service-
27 connected disabled veteran-owned small entrepreneurships which in that year grew
28 to exceed the size standards for certification eligibility. This information shall be
29 developed from data provided to the commissioner by the Department of Economic
30 Development.

1 F. The commissioner may adopt and promulgate rules and regulations he
2 deems necessary for implementation and administration of the provisions of this
3 Chapter, pursuant to the Administrative Procedure Act.

4 §2178. State agency initiative coordinators and reporting

5 A. Each agency of the state shall participate in the Louisiana Initiative for
6 Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships
7 by complying with all provisions of this Chapter, administrative law related thereto,
8 and any other requirements of the commissioner.

9 B. Each agency shall maintain current data relating to its procurement and
10 public contract activities with respect to the requirements of this Chapter. The
11 agency shall be prepared to provide to the commissioner of administration, upon
12 request, the total number and dollar value of all contracts awarded to veteran and
13 service-connected disabled veteran-owned small entrepreneurship in that fiscal year,
14 as well as contracts which provided a good faith veteran and service-connected
15 disabled veteran-owned small entrepreneurship subcontracting plan.

16 C. The initiative coordinator shall be the person serving in the position of
17 undersecretary for a state department or business manager for a state agency. The
18 coordinator shall undertake any duties the agency head deems necessary to ensure
19 that the agency achieves its maximum potential with respect to usage of veteran and
20 service-connected disabled veteran-owned small entrepreneurship in its
21 procurements and public contracts. Specifically, the coordinator shall be responsible
22 for all of the following activities:

23 (1) Collection and reporting of agency data to the commissioner.

24 (2) Coordination of forums to be held at the agency at which veteran and
25 service-connected disabled veteran-owned small entrepreneurship and contractors
26 making a good faith effort to subcontract with veteran and service-connected
27 disabled veteran-owned small entrepreneurship shall be invited to deliver technical
28 and business presentations demonstrating their capability to do business with the
29 agency. Agency participants in such forums shall be those senior managers and
30 procurement personnel who administer procurements and public contracts relevant

to the veteran and service-connected disabled veteran-owned small entrepreneurship.
The forums shall be conducted at least annually.

§2179. Responsibilities of the Louisiana Department of Veterans Affairs

A. The secretary of the Louisiana Department of Veterans Affairs,
hereinafter referred to in this Section as "Veterans Affairs", shall assist Louisiana's
veterans and service-connected disabled veterans in procuring state and federal
contracts.

B. The secretary of Veterans Affairs shall establish policies and procedures
necessary for implementing and publicizing an Internet-based information
clearinghouse for the Louisiana Initiative for Veterans and Service-Connected
Disabled Veteran-Owned Small Entrepreneurships to Louisiana's veteran population.

C. Veterans Affairs shall consult and collaborate with local, state, federal,
and nongovernmental agencies and organizations as necessary to carry out the
provisions of this Chapter. Veterans Affairs shall rely on data furnished by the
United States Department of Veterans Affairs with respect to the number of veterans
and service-connected disabled veterans in the state of Louisiana.

D. Veterans Affairs shall gather veteran-specific demographic, employment,
and entrepreneurial data for the commissioner's consideration in developing annual
goals of the initiative and as additional sources of information for the commissioner's
annual report.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____